IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24168 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHCHANDRA ALIAS RAJU N LEUVA - Petitioner(s)

Versus

COMMISSIONE ROF POLICE & 2 - Respondent(s)

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Appearance :

MS DR KACHHAVAH for Petitioner(s) : 1,MR KAMLESH KACHHAVAH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 15/02/2006

ORAL JUDGMENT

1. The petitioner has filed this petition challenging the order dated 19.10.05 passed by Commissioner of Police, Ahmedabad city respondent

No. 1 herein under provisions of the PASA Act. When the matter was placed for hearing this Court has issued Rule on 19.12.05 the same was returnable on 28.12.05. Pursuant to the aforesaid order the matter is placed for final hearing before this court. With the consent of the parties the matter is taken up hearing.

1.2 Ms. D.R Kachhavah learned advocate for the petitioner has invited my attention to the order of detention dated 19.10.05 passed under sub section (1) of section 3 of the PASA Act. She has also invited my attention to the order dated 19.10.05 by which the petitioner has been sent to Surat Jail i.e order of committal.

1.3 The learned advocate has also invited my attention the grounds supplied by the authority dated 19.10.05 to the petitioner. The said ground reveal following incident of offences committed against the petitioner East Division Prohibition Police Station of Ahmedabad. All the offences are committed under the Act.

1.4 The first Offence registered at East Division

Prohibition Police station in connection with CR NO. 417/05 dated 6.3.05 under section 66B, 65E. It is alleged that the petitioner is storing 20 lts country liquor.

1.5 The second offence registered at East Division Prohibition Police station in connection with CR NO. 887/05 dated 6.6.05 under section 66B, 65E. It is alleged that the petitioner is storing 14 lts country liquor.

1.6 The third offence registered at East Division Prohibition Police station in connection with CR NO. 1323/05 dated 13.8.05 under section 66.1B, 65E. It is alleged that the petitioner is storing 33 lts of country liquor.

1.7 The fourth offence registered at East Division Prohibition Police station in connection with CR NO. 1692/05 dated 5.10.05 under section 66.1B, 65E. It is alleged that the petitioner is storing 45 lts of country liquor.

2. Over the ground alleged is that the petitioner is carrying on antisocial activities. In the aforesaid incident the petitioner falls within the definition of section 2 (b) of bootlegging. It has been also alleged that the activity of the petitioner is carrying on bootlegging and also affect the public life as he is selling the said liquor in this behalf therefore, the authority is entitled to detain the petitioner under the provisions of the PASA Act.

3. The learned advocate for the petitioner has submitted that even if all the incident are taken together there may be violation of law and order but no violation of public order. The learned counsel has relied upon the judgement of the Apex Court in the case of **Piyush Kantilal V. Commissioner of Police , Ahmedabad city & another AIR 1989 SC 491** and the Division Bench judgement of this Court in **Ashok Jivraj @ Jivabhai Solanki Vs Police Commissioner , Surat & Ors reported in 2000 (1) GLH 393** .

4. In this matter the learned counsel for the petitioner has contended that the additional points

in this behalf he has stated that the authority has relied upon four instances on the grounds and alleged that the petitioner is bootlegger within the meaning of provisions of PASA Act. The authority has also stated that they have also annexed the FSL report in this behalf. The learned counsel for the petitioner submitted that the FSL dated 15.6.05 there is presence of Ethile alcohol but absence of other material stated in FSL report. The FSL report further stated that the said product cannot be used for any medicine or cosmetics of other goods to be manufactured with the same. There is other report dated 23.8.04 also state the same thing. It is also been that the country liquor is not used for drinking purpose also.

5. The learned counsel for the petitioner submitted that in the recent judgement of the Apex Court in the case of D**istrict Collector, Ananthapur and Anr. Vs. V. Laxmana (2005) 3 Supreme Court cases 663.** (Para 7 of the same is as from)

6. **"**We do not think that this argument of the learned counsel can be accepted. If the detention is

on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to it that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise, copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.

7. The learned counsel submitted that there is allegation by the authority that the country liquor is dangerous to health and there is allegation that country liquor is injurious to health in support of

the same FSL report which is annexed for which I have already made reference in this behalf.

8. On the other hand Mr. Pujari learned APP state that there are four cases and large quantity of country liquor is recovered then this Court can come to the conclusion that the activities of the detenu is prejudicial to maintenance of public order. He has also relied upon the affidavit filed by Commissioner of Police Ahmedabad city in this behalf. The said affidavit only state that the authority has considered four cases and the petitioner is entitled to detain under provisions of the PASA as he is a bootlegger as defined under section 2(b) of the PASA Act. It was stated that the detenu is dealing in illegal liquor business and he is disturbing the public order public peace, public health and it is likely that continuance of his anti social and bootlegging activities may cause grave or widespread danger to life , property and public health.

9. Having heard learned counsel for the parties and perused the record of the case, I am of the view that only registeration of criminal cases along

cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are not prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registeration of crimes or the activities of theft of the detenu. There has to be nexus and link for such activities with disturbance of the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities even affect tempo of normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality.

10. On careful perusal of the grounds of detention order and relying upon the judgement of the Apex Court in Piyush Kantilal (supra) and in the case of District Collector Vs. V.Laxmana. (supra) considered that the activities of the detenu are prejudicial to public health or public order.

11. After considering the judgement of Laxmana

(supra) in my view the authority must satisfy that the country liquor is dangerous to public health and that it becomes an activity prejudicial to maintenance of public order because the same cannot be effectively dealt with under the provisions of the ordinary Act. But if the arrack country liquor is sold by the detenu and if it is dangerous to public health, then it becomes necessary for the detaining authority to be satisfied on material available to it that the country liquor dealt with by the detenu is an country liquor which is dangerous to public health to attract the provisions of the Act. If the detaining authority is satisfied that such material exists either from the report of the Chemical Examiner or otherwise, copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.

12. However the affidavit does not deal with the report of FSL the grounds stated in the petition particularly like the judgement of the Hon'ble Supreme Court where the Hon'ble Supreme Court has stated that the FSL report has to point out and detaining authority must not allege that the

country liquor is injurious to health.

13. I have considered the FSL report and the FSL report has also stated that there is only presence of ethile alcohol but absence of other material in the said product. It is also stated that the country liquor can be used for any medicinal or cosmetics purpose which can be used in the manufacture of the said product. However the FSL does not state that it is dangerous to public health or the same is adulterated or not fit for human consumption.

14. In this matter it is no doubt true that FSL report has been annexed but FSL does not state that the country liquor is dangerous to public health and therefore the criteria laid down by the aforesaid decision i.e V. Laxmana is not satisfied in this case and therefore on this ground also the order of detention is required to be quashed and satisfied. The petition is allowed. The order of detention dated 19.10.05 is quashed and set aside. The detenu Rameshchandra Alias Raju N Leuva is ordered to be set at liberty forthwith if he is not

required in connection with any other case. Rule is made absolute accordingly. Direct service permitted.

(K.M.MEHTA, J)

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